IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 3008 OF 2000

WITH

WRIT PETITION NO. 3014 OF 2000

WITH

WRIT PETITION NO. 4518 OF 2000

WRIT PETITION NO. 3008 OF 2000

Maharashtra StateRoad Transport Corpn. Petitioners

vs.

Rahiman Usman Bagwan Respondent

WRIT PETITION NO. 3014 OF 2000

Maharashtra Sate Road Transport Corpn. Petitioners

Vs.

Rajkumar Gopaldas Agarwal & Ors. Respondents

WRIT PETITION NO. 4518 OF 2000

Maharashtra State Road Transport Corpn. Petitioners

vs.

govind Prasad Harichandra Agarwal

& Ors. Respondents

Mr. G.S.Hegde, Advocate, for the petitioners.

Mr. Dilip Bodke for respondents.

CORAM: J.H.BHATIA,J.

DATE: 19th October,2007.

P.C.

1. Heard learned Counsel for the parties.

2. The respondents are the licensees of the petitioners i.e. Maharashtra State Road Transport Corporation. The petitioners wanted to evict the respondents from the suit premises and moved an application before the Resident Deputy Collector and Competent Authority under the provisions of the Bombay Government Premises (Eviction) Act, 1955 ("the said Act") on several grounds. However, the Competent Authority refused to issue eviction notice to the respondents. Against that order passed by the Competent

Authority, the petitioners preferred appeals before the District Court under Section 7 of the said Act. The learned Joint District Judge, Satara, relying upon an authority of this Court in **M.F.Desai vs. State of Maharashtra, 1998 BLR 124**, held that against the order passed by the Competent Authority rejecting the application to issue eviction notice, the Corporation cannot prefer any appeal and in the result, all the three appeals filed in the matter came to be dismissed by the Joint District Judge, Satara. Therefore, the petitioners preferred present petitions.

2. The learned Counsel for the petitioners relied upon a Judgment of the Supreme Court in the case of **State of Maharashtra vs. Manwanjee P. Desai & Ors. 2002 (2) Bom.C.R. 3** wherein the judgment of this Court in M.P.Desai vs. State of Maharashtra was reversed in the Special Leave Petition carried by the State of Maharashtra and held that appeal is tenable.

3. Section 7 of the said Act reads as follows :-

> "7(1) An appeal shall lie from every order of the competent authority, made in respect of any Government premises, under section 4 or section 5 to an appellate officer who shall be

the District Judge of the district in which the Government premises are situate, or such other judicial officer in that district, being a judicial officer of not less than ten years' standing, as the District Judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred -

(a)in the case of an appeal from an order under section 4, within thirty days from the date of the service of the notice relating to the order under sub-section (1) of that section; and

(b) in the case of an appeal from an order under section 5, within thirty days from the date of the service of the notice relating to the order under sub-section (1) or (2) of that section, as the case may be :

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the competent authority, the appellate officer may stay the enforcement of that order for such period; and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(5) For the purposes of this section, Greater Bombay shall be deemed to be a district and the Principal Judge of the City Civil Court, Bombay shall be deemed to be the District Judge of the district."

After referring to the provisions of Section 7 of the said Act, Their Lordships observed as follows :-

"7. While it is true, that the High Court placed reliance on the factum of the Competent Authority being an arm or wing of the Government and as such the latter cannot be permitted to lodge a protest against its own order - this, however, in our view is a total misreading of the statute and even in the event the same stands accepted, it will lead to a dangerous

> proposition having far reaching consequences. We, however, hasten to add that in the event the statute desired it to be so then and in that event, consequences irrespective, we could have lent our concurrence to the view expressed by the High Court - unfortunately, however, statute does not affirm such an interpretation, rather negates it. The language used as noticed above in section 7 containing the provision of appeal has to be interpreted in its proper perspective and not in a manner restrictive. If the reasoning provided by the High Court is to be accepted then in that event the statute shall have to be given a go-bye and to be rendered a complete otiose. The word "every" appearing in section 7 immediately before the word "order", stands out to be extremely significant so as to offer an opportunity of appeal in the event of there being an order against the Government."

These three petitions are fully covered by the Judgment of the Supreme Court in the case of State of Maharashtra vs. M.P.Desai. In view of this, it may be held that the contention on behalf of the petitioner is tenable. Therefore, in my opinion, these petitions may be allowed and the appeals may be remanded back to the District Court, Satara, for hearing and disposal as per law.

4. In the result, the petitions are allowed. The impugned orders passed by the Joint District Judge, Satara, in the appeals are hereby set aside. The appeals are remanded back to the District Court, Satara, for hearing and disposal as per law. As the appeals are very old, the District Judge, Satara shall decide them within four months from today.

(J.H.BHATIA,J.)